**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

1. **WRIT PETITION NO. 7078 OF 2004**

Shri Prakash V. Mande ... Petitioner

V/s

The Addl. Commissioner,
Konkan Divn., Mumbai & ors. ... Respondents

ALONGWITH

2. **WRIT PETITION NO. 7093 OF 2004**

Shri Tukaram G. Tambe ... Petitioner

V/s

The Addl. Commissioner,
Konkan Divn., Mumbai & ors. ... Respondents

ALONGWITH

3. **WRIT PETITION NO. 7107 OF 2004**

Shri Narayan B. Deshmukh ... Petitioner

V/s

The Addl. Commissioner,
Konkan Divn., Mumbai & ors. ... Respondents

Mr. V.Y. Jadhav for the petitioners in all petitions.

Mr. r.M. Patne for Resp.Nos.1, 2 & 14 in all petitions.

**CORAM : S.U. KAMDAR, J.**

**DATED : 22ND NOV., 2005.**

**P.C.**:

1. The present writ petitions are filed by the members of the Grampanchayat challenging the disqualification under Sec.14(h) of the Bombay Village Panchayat Act, 1958. All these three writ petitions being identical, this judgment is delivered by keeping in mind the facts in Writ Petition No. 7078 of 2004.

2. The petitioner in the present petition is an elected member of the Grampanchayat Nadgaon-Birawadi, Tal. Mahad, Dist. Raigad. The petitioner is holding the house property in village being house No.449 and do not have any water tap connection in it. There is also a house property held by his father and another property in the name of his sister-in-law. His father has expired and now in the said house his mother is residing alone.

3. It is the case of the petitioner that the petitioner received a bill for house tax somewhere in the month of September, 2003, though the said bill is dated 12.6.2003. According to him, the said bill was never issued to him till September, 2003. On 16.10.2003 the petitioner made payment of the house tax pursuant to the bill received by him in September, 2003. It is the case

of the petitioner that respondent No.3 in collusion with the Sarpanch of village has filed aforesaid application for disqualification of the petitioner as a member of Grampanchayat on the ground that the payment of house tax and the water tax bills are not paid even after the service of the bills and paid three months thereafter. The Block Development Officer of the Panchayat Samiti, Mahad, on the said complaint submitted his report on 5th December, 2003. On 25th September, 2003, opposing the petitioner, the present Sarpanch in collusion with the present respondent No.3 and the Gramsevak passed a resolution being Resolution No.70 and placed on the record of Grampanchayat inter-alia providing that the petitioner should be disqualified under Sec. 14(h) of the Bombay Village Panchayat Act, 1958. Thereafter the Additional Collector, Raigad-Alibag issued notice to the petitioner and fixed the hearing of the matter on 4.2.2004. The petitioner appeared before the authority and gave his reply. After hearing the parties on 7.6.2004, the Additional Collector, Raigad-Alibag inter-alia held that the petitioner does not incur any disqualification under Sec. 14(h) of the Bombay Village Panchayat Act, 1958.

4. However, the third respondent preferred an appeal

against the said order before the Additional Commissioner, Konkan Division, Mumbai, being Appeal No. 222 of 2004. On 28.7.2004, after hearing the parties, the respondent No.1 allowed the said appeal and held that the petitioner has incurred disqualification under Sec. 14(h) of the Bombay Village Panchayat Act, 1958. The present petitioner is challenging the order passed by the Additional Commissioner, dated 28.7.2004. It is also the case of the petitioner that, out of 9 members of the Grampanchayat, 8 members are disqualified.

5. The learned counsel for the petitioner inter-alia contended that the order passed by the Addl. Commissioner is totally perverse and illegal and based on no material on record. It has been contended that, after giving a finding of fact by the Collector that under the provisions of Sec. 14(h) there is no proof or evidence to show that the bill was served on 17.6.2003 on the petitioner and thus there is no payment of the taxes or bills for a period of three months. It has been contended by the learned counsel for the petitioner that the order of the Collector passed on finding of fact ought not to have been reversed or altered by the Commissioner in his jurisdiction particularly when there is no material or evidence in support of the contention

that the bills were served on the petitioner on 17.6.2003.

6. On the other hand, the learned counsel for the respondent Nos. 1, 2 and 14 has contended that the Commissioner reversed the order passed by the Collector on the basis of the statement of the peon of the Grampanchayat stating therein that he has served the petitioner on 17.6.2003. Other respondents including respondent No.3 are served but inspite of service they are not present.

7. I have heard the parties and I have considered the provisions of Sec. 14(h) of the Bombay Village Panchayat Act, 1958. The provision of Sec. 14(h) of the Bombay Village Panchayat Act, 1958 reads thus -

> "**Sec.14:-** No person shall be a member of a panchayat continue as such, who -
>
> **sub-sec.(h):** fails to pay any tax or fee due to the Panchayat or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him."

For the purpose of incurring disqualification under the provisions of Sec. 14(h), it is necessary that there must be an actual service of the bill demanding payment of the tax or fee due to the Panchayat or the Zilla Parishad. While considering the provision of Sec. 14(h) of the Bombay Village Panchayat Act, 1958, it is required to be considered that the word used "bill" served that there must be a document to show that in fact the service of the bills are made on the members of the Grampanchayat for the purpose of commencing the period of three months as contemplated therein. The only evidence which has been produced in support of the contention that there is no payment of the bill or tax is the statement of the peon stating that he has served the bill on 17.6.2003. It is not in dispute that no acknowledgment of service or the exact date of the said bill tendered to the member of the Grampanchayat has been produced in the course of the evidence either before the Collector or before the Commissioner. In my opinion, the action of disqualification as contemplated under Sec.14(h) is a drastic step and for the purpose of such drastic step to be inflicted on a duly elected member of the Grampanchayat, it is necessary that the provision of the said Sec.14(h) must be strictly

construed. In my opinion, a mere statement of the peon that he has effected service on the member of the Grampanchayat on the particular day is not sufficient but there must be an evidence either in the form of acknowledgment from the member of the Grampanchayat or there must be a material produced from the record of Grampanchayat indicating an actual service on a particular day. In fact, the bill was sent through the peon and was tendered by the peon to the member of the Grampanchayat on the particular day. It is only when a clinching evidence or material if produced in support of the fact that the bill has been duly served on the member of the Grampanchayat and that the action can be initiated under the provisions of the aforesaid Sec.14(h) of the Bombay Village Panchayat Act, 1958.

8. In my opinion, a mere statement of the peon is not sufficient for initiating a drastic action of disqualification of the member of the Grampanchayat. In that view of the matter, I am of the opinion that the present petition must succeed.

9. Accordingly, all the three petitions are made absolute. The order passed by the Commissioner dated 23.7.2004 is set aside and the order passed by the

Deputy Collector is confirmed. All the three petitions are disposed of accordingly. No order as to costs.

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